

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

FILED  
IN CLERKS OFFICE

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U.S. DISTRICT COURT  
DISTRICT OF MASS.

INTAC INTERNATIONAL, INC.,	)
Plaintiff	)
	)
v.	)
	)
A CORP d/b/a ROOTERMAN and	)
DONALD MACDONALD,	)
Defendants	)
	)

CIVIL ACTION NO.  
04-10040 REK

**MOTION FOR SUMMARY JUDGMENT SUBMITTED BY**  
**DEFENDANTS A CORP D/B/A ROOTERMAN AND DONALD MACDONALD**

The Defendants, A Corp d/b/a Rooterman (hereinafter "A Corp") and Donald MacDonald (hereinafter "MacDonald"), hereby move this Honorable Court, pursuant to Fed. R. Civ. P. 56 (c), to enter judgment in their favor as a matter of law on counts of copyright infringement, violation of the Lanham Act, and all other claims based upon such federal claims, on the grounds that there are no material facts in dispute and A Corp and MacDonald are entitled to judgment in their favor as a matter of law on the following bases: 1) Plaintiff failed to register for copyright with the Copyright Office its Wintac software sold to A Corp as described in the Complaint by the time the present action was bought, 2) when A Corp purchased upgraded Wintac software with license of unlimited use, A Corp did not infringe Plaintiff's trade name or trademark by recommending Plaintiff's name and software to A Corp's new franchisees after they bought the franchise, and there is no evidence to support Plaintiff's allegation that A Corp's use of Plaintiff's trade name or mark would cause the likelihood of confusion as to the origin of any

allegedly infringed software, 3) there is no evidence to demonstrate that A Corp ever made an advertisement using Plaintiff's name or trademark to deceive any prospective purchasers of Plaintiff's software, 4) Plaintiff's claims under the Lanham Act are preempted by the Federal Copyright Act, and 5) if the Court grants Defendants' Motion for Summary Judgment, the state claims should be dismissed for lack of supplemental jurisdiction or diversity jurisdiction.

A Motion to Dismiss has previously been filed moving to dismiss all counts against MacDonald as a defendant.

Defendants incorporate herein by this reference their accompanying Memorandum of Law, Statement of Undisputed Facts, Affidavit of MacDonald, Affidavit of Eugene Dundey, and an Appendix of Exhibits, in support of this Motion.


#### **REQUEST FOR ORAL ARGUMENT**

Pursuant to L.R. 7.1(D), A Corp and MacDonald respectfully request opportunities for oral arguments before this honorable Court.

#### **RULE 7.1 (A)(2) CERTIFICATES**

Pursuant to L.R. 7.1(A)(2), counsel for Defendants has conferred with Plaintiff's counsel on the above motion and attempted in good faith to resolve or narrow the issues included.

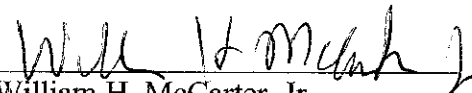
Respectfully submitted by,  
Defendant, A Corp d/b/a Rooterman, and  
Defendant Donald MacDonald  
By their Attorney,

  
William H. McCarter, Jr.  
BBO # 327620  
PO Box 1044  
Winchester, Massachusetts 01890  
(781) 729-3892

**CERTIFICATE OF SERVICE**

I certify that a true copy of the above document was served by <sup>hand</sup> ~~mail~~ upon the attorney of record for Plaintiff on the date set forth below.

Date: June 7, 2004

  
William H. McCarter, Jr.